

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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| Platform II Lawndale, LLC, |) | No. 22 B 07668 |
| |) | Chicago, Illinois |
| |) | 1:15 p.m. |
| Debtor. |) | May 15, 2024 |

TRANSCRIPT OF PROCEEDINGS BEFORE THE
HONORABLE DEBORAH L. THORNE

APPEARANCES:

| | |
|-----------------|---------------------|
| For the Debtor: | Mr. Kevin Sterling; |
| For Greenlake: | Mr. Adam Toosley; |

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| Prepared By: | Amy Doolin, CSR, RPR U.S. Courthouse 219 South Dearborn Room 661 Chicago, IL 60604. |
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1 THE CLERK: Platform II Lawndale, LLC.

2 MR. STERLING: Good afternoon, Your
3 Honor. Kevin Sterling on behalf of debtor.

4 THE COURT: Good afternoon.

5 MR. TOOSLEY: Good afternoon, Your
6 Honor. Adam Toosley for Greenlake, the secured
7 creditor.

8 THE COURT: Okay.

9 MR. STERLING: I believe Mr. Morgan,
10 who was representing the investors, is also on the
11 Zoom.

12 THE COURT: Any update from the
13 parties?

14 MR. TOOSLEY: So, we continued
15 everything a couple of weeks. Yesterday I did
16 receive from Mr. Sterling an email showing that the
17 funds were transferred out on March 12th of 2024,
18 which was six days after the rule to show cause was
19 entered.

20 The court entered the rule on the 6th
21 and continued it until the 13th, and the funds were
22 still in the account as of the day before and then
23 transferred out. So, we still are in a -- I was
24 assuming based on filings from Mr. Morgan and others
25 that the funds had been dissipated well in advance of

1 the rule to show cause order, but it is obviously not
2 the case. It was six days after, and they still have
3 the money.

4 We are --

5 MR. STERLING: There --

6 MR. TOOSLEY: Yeah, go ahead.

7 MR. STERLING: If I may, Your Honor,
8 that actually is a false conclusion. Apparently
9 there was -- it was drawn out with a cashier's check
10 on the date that it shows being drawn out from the
11 bank account on I believe it was the 13th or 14th of
12 February.

13 Somehow that first cashier's check --
14 and I have actually contacted the bank to try to
15 obtain a copy of it -- the first cashier's check had
16 been returned back to the bank and a new check had
17 been issued, so the funds were out of the account as
18 of the middle of February. They just reissued a new
19 cashier's check payable to the investors.

20 And that was part of what Mr. Toosley
21 wanted to know, well, did the investors get the money
22 back. The check was made payable to the investors,
23 an account that is titled in the name of the
24 investors. But that money was already out because
25 the bank had taken the funds. Nobody has presented

1 the first cashier's check.

2 I'm trying to see if I can get a copy
3 of it. But as of right now, I don't have a copy of
4 that cashier's check, and the bank is trying to
5 locate it.

6 MR. TOOSLEY: So, Your Honor, that was
7 part of the issue. Even in the state court case,
8 we've run into every roadblock imaginable just to get
9 bank records for the debtor's accounts. And, you
10 know, we are now being presented with a cashier's
11 check that I understand what Mr. Sterling is saying
12 is dated March 13.

13 So it shows specifically that it was
14 again after the rule to show cause was entered. I
15 understand the process may have been started prior to
16 that, but we still don't have what we believe to be
17 relatively straightforward documents, that being the
18 bank records.

19 We know that there is two
20 debtor-in-possession bank accounts. We now know
21 there's a third debtor bank account, as seen by the
22 bank account information on the bottom of this
23 cashier's check. I don't know why it's difficult to
24 get the bank records showing the rents coming in
25 still, which would be what we're fighting about

1 here.

2 We have a situation in which there
3 was a hundred and some odd thousand dollars in the
4 account in October. Rents were then collected for
5 November, December, January and February, and then
6 all of a sudden there was only 15 -- at least 30,000
7 every single month. The only payment the court
8 allowed was one \$25,000 payment to counsel, and then
9 magically there's only 15,000 in the account.

10 It just logically isn't making any
11 sense. They've, obviously, used the rents, our cash
12 collateral, to pay back these loans that predated the
13 date of the plan in October that were given by
14 investors. And they robbed the state court
15 foreclosure judge of the opportunity to make the
16 determination that the court, Your Honor, wanted her
17 to have to make.

18 And so I'm stuck in this position
19 here, because if you look at all of the prior
20 operating reports, they never referenced any amount
21 of plan investment. It wasn't until they filed the
22 January one that they for the first time claimed
23 \$295,000 of plan investments. They never identified
24 any loans at any point.

25 I think we have a legal issue here as

1 to whether or not an unapproved loan made just to
2 make adequate protection payments which were made
3 only through January of '23 -- they were collecting
4 rent for over a year without making any adequate
5 protection payments -- could constitute cash
6 collateral.

7 We put forth all of our reasons why
8 and identified those in the documents. Now, again, I
9 think the intention was this was all going to be
10 decided by the state court, but now we've been robbed
11 of that opportunity because the money disappeared.

12 But I think that from a legal
13 standpoint, based on the briefs -- there's three
14 briefs on the rule to show cause. There are three
15 briefs on the motion to reconsider that was filed as
16 well that go through in depth all of these stops,
17 including what was filed with the plan, what was
18 filed with the disclosure statement, what was in the
19 account in October, and the court to make a
20 determination as to whether this constitutes cash
21 collateral.

22 Because we still -- I know counsel is
23 saying he still doesn't have the documents. We've
24 been asking for them since we were in front of you on
25 February 14th, and we're now three months later and

1 still can't get basic information as to exactly how
2 this process happened and why the determination was
3 made unilaterally by the debtor to just say these
4 were plan investments and take out the \$295,000. So
5 that's where I'm at.

6 MR. STERLING: Your Honor, if I may,
7 while Mr. Toosley has testified here with a whole
8 bunch of facts that --

9 THE COURT: Well, a lot of facts that
10 I recall as well.

11 MR. STERLING: Well, the --

12 THE COURT: The court was -- I was
13 here. I am aware that there was supposedly rents
14 coming in. I'm also aware that there was an effort
15 made by the debtor to collect from investors. And
16 all I was trying to say -- and it was pretty clear --
17 there should be an accounting so we know what rents
18 came in.

19 Mr. Toosley's client has a lien on
20 rents. He had that the day he -- this came into the
21 court. I don't think anybody is disputing that.

22 We also know that there was some
23 investor monies. This is not a difficult issue. I
24 mean, I, frankly, have thought, like, okay, spread
25 out the bank accounts. You can see where this money

1 came in or that money came in. I used to be a
2 receiver in CFTC cases. It's tracing where the money
3 comes in.

4 And that was the order that I
5 entered. And I have jurisdiction to enforce my
6 order. And I am going to enter an order. I want to
7 make sure it's clear, because I believe that your
8 client is in contempt for failure to abide by the
9 order, and I'm going to give him time to purge that
10 contempt, but I want to be very specific so there's
11 no question.

12 MR. STERLING: Your Honor, if I may,
13 one, the -- the -- I came into this for the motion
14 for rule to show cause. And I got to take a nice
15 clean look at things. And Your Honor instructed me
16 at my first appearance here to identify the sources
17 of the investor money coming in. We did that.

18 In our response brief, we detail each
19 investor. We attached the dates. And Mr. Toosley is
20 incorrect. He has -- there are -- from what I
21 understand, there are two debtor bank accounts. He
22 has those bank statements. You can see the day that
23 that 285 came out of the account.

24 It went to the bank -- I believe it
25 was Highland Park Bank -- to fund a cashier's check.

1 That check got delivered to the investors. For some
2 reason, the first cashier's check was not negotiated,
3 and they turned it in and got a new check issued.

4 That check is the check that I provided to
5 Mr. Toosley where the money went.

6 THE COURT: But where are --

7 MR. STERLING: -- exactly --

8 THE COURT: -- the rents? Where are
9 the rents? That's the part we're missing. I don't
10 think Mr. Toosley is saying that once it's
11 established how much an investor invested that the
12 investor doesn't get the money back.

13 MR. STERLING: Understood.

14 THE COURT: Tell me if I'm wrong.

15 MR. TOOSLEY: Yeah, the proposed
16 plan --

17 MR. STERLING: Well, to that end, Your
18 Honor, I don't see that the -- that Your Honor's
19 order of I believe it is February 14th, one, asked
20 for an accounting. What it said was that the case
21 was dismissed with prejudice, but will remain active
22 until the state court receiver was put back in place.
23 I may be paraphrasing.

24 THE COURT: And I'm turning over the
25 funds.

1 MR. STERLING: And to turn over all
2 the funds.

3 THE COURT: Right.

4 MR. STERLING: It doesn't say which
5 funds.

6 THE COURT: Okay.

7 MR. STERLING: It doesn't say
8 effective of what date. And once the court -- and
9 in my opinion, Your Honor, once the court dismissed
10 the bankruptcy, the debtor was free -- absent being
11 told don't pay bills, don't do anything with the
12 money, that there were ComEd payments made, there
13 were other utility payments made, and they returned
14 the money from the investors that they had been
15 collecting.

16 THE COURT: Well --

17 MR. STERLING: So unless there is a
18 clear mandate within Your Honor's order as to which
19 funds or an amount or a balance as of a particular
20 date, I don't see how you can hold Platform II
21 Lawndale in contempt.

22 THE COURT: Listen, it was very -- it
23 was very clear. We had gone on for months. And if
24 you want to go back and review all the transcripts
25 and all the discussions between Mr. Jordan and Mr.

1 Toosley and this court -- and if there is any
2 criticism, it probably is of the court that I let
3 this case go on way too long.

4 But once the motion was -- there was
5 an order modifying the stay to go back to the state
6 court, I wanted and was very clear that the funds s
7 should be turned over to the receiver.

8 And I did not say only the rents. I
9 meant all the funds. Because the state court
10 foreclosure judge can determine what belongs to
11 Mr. Toosley's client in terms of his rents.

12 MR. STERLING: Well, I --

13 THE COURT: And that was --

14 MR. STERLING: Okay.

15 THE COURT: -- when I say the funds
16 that are in the debtor's account should be turned
17 over, it didn't say only the investor account, only
18 the rents. It was the funds. And I believe that
19 your client, who I know was very concerned about
20 returning investor money -- I don't blame him. He
21 got that money because he was trying to fund a plan
22 that didn't happen. But that order was to turn over
23 the funds. It did not say just the rents.

24 MR. STERLING: Okay. Understood, Your
25 Honor. I read the transcript leading up to that

1 order. I did not -- I personally in review of it did
2 not see that that was the case.

3 THE COURT: Well --

4 MR. STERLING: But be that as it may,
5 my client -- it's impossible for my client to purge
6 the contempt because he doesn't have the money.

7 THE COURT: But your client could
8 provide the accounting so that Mr. Toosley's client
9 or the state court could see every single month that
10 Joe Schmo who was renting this little storage locker
11 made this rent. That's not impossible. That is
12 money -- that is -- if they don't have those kind of
13 accounts, then I really can be faulted for letting
14 this case continue as long as I did.

15 That accounting must be provided. I
16 don't know where the state court receiver is at this
17 point, but Mr. Toosley's client is entitled to those
18 rents.

19 MR. STERLING: Well, Your Honor, one,
20 I think that the order of an accounting went away
21 when the case got dismissed with prejudice. I
22 understand Your Honor has the authority to enforce
23 your orders, which I am not disputing that, but I'm
24 suggesting that the order doesn't provide for a clear
25 mandate to hold in contempt. That's number one.

1 And I went back to the transcript, and
2 the transcript dismissed the case with prejudice.
3 And the only thing that -- based on the transcript,
4 the only thing the court retained jurisdiction on was
5 to adjudicate Mr. Jordan's fees.

6 THE COURT: I also said turn over the
7 money to the receiver.

8 MR. STERLING: Your Honor --

9 THE COURT: And that money was not
10 turned over to the receiver.

11 MR. STERLING: I under --

12 THE COURT: And now I'm entitled to
13 know what money should have been turned over. And I
14 don't know that because nobody has since February
15 given us any kind of accounting. It's just not that
16 hard.

17 MR. STERLING: I understand. But,
18 Your Honor, Mr. Toosley's client has their remedies
19 in state court if these monies were improperly paid
20 out. That would be -- he could file an action for
21 constructive trust against the investors.

22 THE COURT: But I entered an order
23 saying turn the money over to the receiver, and that
24 was not -- believe me, I would be a very happy person
25 to never see this case again.

1 MR. STERLING: Okay.

2 THE COURT: But I right now have an
3 order that needs to be enforced and that is to turn
4 over the money. And if your client isn't capable of
5 turning over the money because it's gone, then your
6 client better show us an accounting that shows what
7 money should have been turned over.

8 Does that -- I mean, I don't think I'm
9 being illogical.

10 MR. STERLING: It's not illogical,
11 but, Your Honor, once the court dismissed the
12 case --

13 THE COURT: I retain jurisdiction over
14 my orders.

15 MR. STERLING: I understand.

16 THE COURT: My order was to turn over
17 the money, and if you can't turn over the money, I
18 want an accounting. And if that's been supplied in
19 the state court, then --

20 MR. STERLING: Well --

21 THE COURT: -- great.

22 MR. STERLING: Okay. Well, I mean, I
23 would also suggest that before a contempt order is
24 put in place that we are entitled to an evidentiary
25 hearing. And there hasn't been an evidentiary

1 hearing on the contempt.

2 THE COURT: Is anybody denying that
3 the money wasn't turned over?

4 MR. STERLING: We are denying that we
5 violated the court's order.

6 THE COURT: Did your client turn over
7 the money to the receiver?

8 MR. STERLING: There was monies turned
9 over to the receiver, yes. Mr. Toosley --

10 MR. TOOSLEY: 15,000.

11 MR. STERLING: Mr. Toosley in his
12 motion said we turned over nothing.

13 MR. TOOSLEY: No, that's not correct.

14 MR. STERLING: Not only did we
15 turn over the \$15,000, the receiver actually sent
16 money back to my client to pay bills for the
17 property.

18 MR. TOOSLEY: And I didn't say that.
19 I specifically --

20 MR. STERLING: Well --

21 MR. TOOSLEY: -- identified --

22 MR. STERLING: -- we just have to look
23 at his motion. He said nothing was turned over.
24 He's made broad statements asserting -- asserting
25 over-generalizations, and the wrong conclusions based

1 on the facts as he's interpreting them.

2 But, yes, I will say to Your Honor the
3 285 was not turned over to the receiver. The 285 and
4 change was given to the investors.

5 MR. TOOSLEY: So I think all the
6 parties are in agreement with that. I have not
7 received February's bank statements. I don't know --
8 maybe -- again, I've gotten 1500 emails in this case
9 in the last year and a half, as you can probably
10 imagine. We've seen you a lot over the last three
11 months, four months.

12 But I don't -- the last operating
13 report that was filed with the court was January.
14 And Your Honor entered an order on January 23rd
15 requiring a detailed accounting. So this is not the
16 first time that there's been an order requiring a
17 detailed --

18 THE COURT: Are you suggesting that I
19 shouldn't enforce that order? There never was an
20 accounting.

21 MR. STERLING: Well --

22 THE COURT: If Mr. Samuels, who is the
23 receiver, wants to come in here and say that there's
24 been a fine accounting, I don't need anything more,
25 I'll let him do it, but --

1 MR. TOOSLEY: We just received -- we
2 just received March and April in the state court
3 case. We had a hearing yesterday in front of the
4 foreclosure judge. We are still missing all of
5 February, which is the time period which we are now
6 hearing is the critical time period when the funds
7 were allegedly first distributed.

8 February is the critical -- we have
9 the bank statements for the borrower/debtor for March
10 and April that just came in at the end of last week.
11 I did not get February, so that's kind of where we're
12 outstanding, especially if I'm hearing today that
13 that's when the transfer happened despite the date on
14 the certified check that I received.

15 MR. STERLING: I believe he has the
16 February statements, but if he doesn't, I will give
17 them to him within the week. But, Your Honor, if it
18 is the case that an accounting was required based on
19 your January order, then I respectfully suggest that
20 this case should not have been dismissed then with
21 prejudice because the case was dismissed with
22 prejudice.

23 And as long as I've been practicing,
24 once the case was dismissed with prejudice -- and I
25 understand what Your Honor ordered relative to the

1 turnover of funds, but that would terminate all the
2 prior orders. So if an accounting was required in
3 January, I just postulate that the case should not
4 have been dismissed with prejudice --

5 THE COURT: Let me just --

6 MR. STERLING: -- when it was
7 dismissed with prejudice.

8 THE COURT: Mr. Toosley.

9 MR. TOOSLEY: Yes.

10 THE COURT: What are you missing
11 in the state court? Because maybe I don't have to
12 go down this road. I mean, clearly I don't -- I
13 don't even know what funds should have been turned
14 over --

15 MR. TOOSLEY: Correct.

16 THE COURT: -- because I really can't
17 tell whether you ever got all of your rents,
18 whether -- with the cash collateral orders that were
19 entered in the case -- you know, we had a cash -- I
20 think we had only the interim order that was
21 continued throughout the case.

22 MR. TOOSLEY: That's correct. And we
23 received the first four-and-a-half months of adequate
24 protection. Then January of '23 they stopped. And
25 the next four months Your Honor entered an order that

1 required adequate protection payments. They weren't
2 made.

3 THE COURT: Right.

4 MR. TOOSLEY: The parties were working
5 out a plan at that point.

6 THE COURT: Right.

7 MR. TOOSLEY: So we didn't actually
8 raise it as an objection. We then worked together on
9 a plan, and it was filed in September for presentment
10 in October. It did not, obviously, consummate due to
11 facts that we don't have to rehash.

12 THE COURT: Right. And also the case
13 was dismissed.

14 MR. TOOSLEY: Correct. And so there
15 was no cash collateral then entered after that date.
16 Adequate protection -- they weren't able to -- Your
17 Honor said if they want to make payments of, you
18 know, critical utilities and employees --

19 THE COURT: Right, and then I think
20 you were happy to --

21 MR. TOOSLEY: I said -- and I even
22 said I would work with Mr. Jordan if there were
23 specific expenses that weren't -- that were a little
24 outside the ordinary to approve. Mr. Jordan and I
25 worked together really well on this. I'm sure Your

1 Honor heard that.

2 And so, you know, then there was
3 four more months of rents that came in. And,
4 obviously, they used the rents to pay back the
5 pre-confirmation investments that were used for
6 adequate protection. That's the only explanation
7 as to where the money went because the
8 post-confirmation investments only attribute to
9 150,000 or so. There were 300,000 in the account,
10 over 300,000 as of the end of January.

11 MR. STERLING: That was the \$285,000
12 that we detailed the date in which those deposits
13 were made. Mr. Toosley has those bank account --
14 bank account statements showing those deposits coming
15 in. The amounts match exactly. We provided it in
16 our response to the motion for rule dollar for dollar
17 and the date it came in. The fact that the plan
18 wasn't approved until October is, frankly, I think a
19 red herring because these investors -- he was
20 planning --

21 THE COURT: I know. We've --

22 MR. STERLING: My client was leading
23 up to this, but he's making statements. He's making
24 statements that are just not true.

25 THE COURT: Okay.

1 MR. TOOSLEY: Even Mr. Jordan said
2 that on the record on February 14th that they were
3 not plan investments. He said it doesn't make sense
4 logically because of the amount of rents that came
5 in. I cited that in my response on the motion to
6 reconsider.

7 So previous counsel for the debtor
8 admitted that these were not plan investments. They
9 were rents. That's why we need this information.
10 Again, it just logically doesn't make sense how we
11 can collect \$35,000 a month in rent without cash
12 collateral -- use of cash collateral, and then only
13 have 15,000 to turn over. It just -- logically it
14 doesn't -- can't happen. So --

15 MR. STERLING: Well, I --

16 THE COURT: So, I think this is -- I
17 mean, I'm going to have to cut this off because I
18 know -- we can have an evidentiary hearing, and you
19 can put in -- I mean, we can go back to the beginning
20 of time, what was rents, what wasn't and what was in
21 that account. Maybe those weren't all investor
22 monies. Maybe they were investor monies that came in
23 in January, but there were rents that went places it
24 shouldn't have gone.

25 This is kind of a -- and I don't --

1 and I certainly do not want to overlap with what is
2 going on down the street in terms of whatever your
3 client's claims are for rents that they should have
4 received.

5 MR. STERLING: The court has no
6 authority to do anything before the case was
7 reinstated in state court.

8 THE COURT: So basically the debtor
9 has got some limbo out there telling me I can't
10 require an accounting to know what was turned over.
11 I mean, we're talking about money that came into an
12 account. Maybe it came in in November. Maybe it
13 came in in January. Maybe it came in in early
14 February. And then a big chunk is returned to
15 investors, but there may have been other shenanigans
16 going on before. I don't know.

17 And I don't really want to spend time
18 that -- I mean, I want my order to -- I want somebody
19 to pay attention to the order, turn over the funds.
20 But when we don't know what that number is, it's hard
21 for your client to know what to turn over. It's hard
22 to know whether Mr. Toosley has gotten the right
23 amount, and I have no idea.

24 So maybe we should set this for an
25 evidentiary hearing. And I'm going to ask to go back

1 through an accounting. I mean, what rents came in
2 from the beginning of this case? You know, because
3 how do I know whether the right amount was turned
4 over.

5 MR. STERLING: Well, Your Honor, I
6 understand. The point of the evidentiary hearing in
7 my mind based on where I came into the case is
8 whether or not Platform II Lawndale should be held in
9 contempt for disobeying your order. Is that -- I
10 mean, I'm just suggesting that's what I understand is
11 before you.

12 THE COURT: But how do I know? Your
13 client says I turned over the money. It was \$15,000.
14 And I took out the rest of this money and returned it
15 to investors.

16 MR. STERLING: Right.

17 THE COURT: Okay. Well, how do I
18 know that that's the right amount? How do I know
19 what happened to the rents that may have gone for
20 other --

21 MR. STERLING: Well, I --

22 THE COURT: -- reasons? I'm now
23 starting to really wonder what in the heck happened
24 in this case.

25 MR. STERLING: I submit that Mr.

1 Toosley has his rights and has his remedies to pursue
2 in the state court action, and that -- and that Your
3 Honor doesn't need to go through this. One, we can't
4 purge the contempt by bringing the money back. We
5 don't have it.

6 So if there's a contempt, he can't
7 purge that contempt because he can't -- he has no
8 ability or I say Platform II Lawndale does not have
9 the ability to get that money back. It's in the
10 hands of third parties. That's number one.

11 So, if Mr. Toosley believes he has
12 rights to pursue that money, he has those rights in
13 a state -- in a state court action. That's number
14 one.

15 Number two, it's my opinion there was
16 not a clear mandate prohibiting --

17 THE COURT: And I understand you don't
18 think I did a good job on my order.

19 MR. STERLING: And that said -- and
20 then the whole idea of purging it with an accounting,
21 I see that outside -- I mean, the accounting won't
22 necessarily purge the contempt.

23 THE COURT: No, but it might give me
24 an idea of whether your client's in contempt or not.
25 I mean, you see what I mean?

1 MR. STERLING: Well --

2 THE COURT: I mean, we know money
3 came in and we know money went out. I ordered that
4 the money that was in that account be turned over.
5 I did not say return it first to the investors. I
6 wanted it all turned over to the state court receiver
7 so that it could be determined down the street.

8 MR. STERLING: Well --

9 THE COURT: And it wasn't.

10 MR. STERLING: Okay.

11 THE COURT: Now your client has
12 violated my order.

13 MR. STERLING: Well, I didn't glean
14 that from your order.

15 THE COURT: My order said turn over
16 the money in the debtor's account.

17 MR. STERLING: Well, if I may, Your
18 Honor, I will go back and pull out the order, but
19 I -- word for word to me the order -- and I believe
20 Mr. Toosley is the one that submitted it to the
21 court. I believe it's ambiguous.

22 THE COURT: No, I think --

23 MR. TOOSLEY: By the way, March 6th
24 Your Honor did already find a rule to show cause has
25 been entered. It was just continued for a hearing on

1 the 13th, so there has already been an order finding
2 on the rule. So I just wanted to make sure we're
3 clear that the March 6th order already did make that
4 finding.

5 MR. STERLING: I didn't --

6 THE COURT: The appointment of the
7 receiver, maybe the receiver wasn't appointed exactly
8 the next day, but the reason that I kept that -- put
9 that in was that we didn't know at what point the
10 receiver would be appointed. We knew it might be
11 about a day or so. And so if between February 14 and
12 the appointment of the receiver money jumped out of
13 that account that shouldn't of, I consider that a
14 violation of my order.

15 MR. STERLING: Okay. I understand.

16 THE COURT: Does that make sense to
17 you? I mean, I understand --

18 MR. STERLING: Well, I understand
19 perhaps what Your Honor's intent is behind the order,
20 but it's not manifested in the transcript, and I
21 don't believe it's manifested in the order.

22 THE COURT: Upon the appointment of
23 the receiver all funds held in any of the debtor's
24 bank accounts shall be turned to the receiver because
25 at that point we knew that there were several

1 different bank accounts.

2 MR. STERLING: Understood. I'm not
3 trying to be -- I'm not trying to be --

4 THE COURT: I suppose I should have
5 said any -- I mean, I guess you could fault me -- any
6 money in the account on February 14th will be turned
7 over, because if money went elsewhere between
8 February 14th and the day the receiver was actually
9 appointed, I suppose you could make a very good
10 argument that it was a terrible order and it wasn't
11 precise enough.

12 MR. STERLING: I'm not suggesting it's
13 a terrible order.

14 THE COURT: Well, you're --

15 MR. STERLING: But I'm just suggesting
16 that the money to be turned over --

17 THE COURT: When did the money leave
18 the account?

19 MR. STERLING: -- to the receiver was
20 it on the date that this case was dismissed or is it
21 on the date the receiver was appointed? I mean,
22 that's the conflict, and that's the ambiguity in the
23 order.

24 THE COURT: So, are you saying --

25 MR. STERLING: So as --

1 THE COURT: -- today -- let me ask a
2 question.

3 MR. STERLING: All right.

4 THE COURT: Are you saying today that
5 when this order was entered on February 14th there
6 was money in the account that was not turned over to
7 the receiver because we had this gap of a couple of
8 days?

9 MR. STERLING: That's not what I am
10 saying.

11 THE COURT: Then what are you saying?

12 MR. STERLING: What I'm saying is
13 during that period of time when the court had
14 dismissed the case with prejudice, albeit it said
15 turn over the money when the receiver is appointed --

16 THE COURT: So, you're not answering
17 my question. My question is what monies were in the
18 account on February 14th and what monies were turned
19 over to the receiver? Is it the same amount?

20 MR. STERLING: No.

21 THE COURT: Okay.

22 MR. STERLING: The reason it wasn't
23 the same amount, as I detailed in my response brief,
24 is, A, the money was returned to the investors, the
25 285; and, B, there were a -- there was monies that

1 were paid to Neal Gerber, which was authorized by the
2 court.

3 THE COURT: That was different.

4 MR. STERLING: And then the -- and
5 then the third amount related -- or the third
6 group -- group of funds were property expenses which
7 were paid. And we provided that detail of what
8 monies were spent in that period of time between the
9 entry of the order dismissing the case and the
10 appointment of the receiver.

11 So to the extent that that order is
12 ambiguous, I think -- my opinion, and based on having
13 addressed contempt matters before, that there needs
14 to be a clear mandate which my client violated.

15 THE COURT: I think your client did
16 violate the sentiment that was in this order.

17 MR. STERLING: Okay.

18 THE COURT: It was that I'm going to
19 dismiss this came. I want the money to -- and there
20 was a statement made on the record that day that the
21 receiver wouldn't necessarily be re-appointed on the
22 14th; that they'd have to go back to state court, the
23 receiver has to post a bond, all these things. So,
24 in that interim, your client took advantage of that
25 interim and may have taken the money and put it

1 elsewhere. In this sense, I think my order was
2 violated.

3 MR. STERLING: Okay.

4 THE COURT: And because of that, I
5 want an accounting to know what was taken out of the
6 account and where did it go and what was in the
7 account. I think that at least answers the question
8 that Mr. Toosley is entitled to know and, frankly,
9 the court is.

10 MR. TOOSLEY: Okay. And, Your Honor,
11 today --

12 THE COURT: We're not talking about a
13 long time.

14 MR. TOOSLEY: No, I said we now have
15 March and April. I don't think we have a problem
16 with March and April. So it's just that time period
17 that we're hearing about, about the weeks leading up
18 to the dismissal of the 14th, and then the rest of
19 that month of February.

20 MR. STERLING: So, if I get a date --
21 if he has a date range, and that will purge the
22 contempt just by providing that accounting?

23 THE COURT: Well, it will go a long
24 ways towards it. It's not going to -- I mean, I
25 can't -- you're not going to re-invent the money.

1 If it's not there, I'm going to let Mr. Toosley
2 deal with that. But what I want to know is when
3 the last operating report -- we're going to go
4 back to the last operating report, which was signed
5 under penalty of perjury, what month did that
6 reflect?

7 MR. TOOSLEY: January 31st was the
8 last one.

9 THE COURT: Okay. So that was filed
10 sometime in February?

11 MR. TOOSLEY: Yeah, there was like
12 five months that were filed.

13 THE COURT: Okay. So from January
14 31st through the date that the receiver received
15 whatever money the receiver received, that's the
16 accounting I want. It's only probably six weeks at
17 the most.

18 MR. STERLING: So January 31st to I
19 believe --

20 MR. TOOSLEY: The date that the check
21 was written to the receiver. I don't know what that
22 is off the top of my head.

23 MR. STERLING: The funds were wired.

24 MR. TOOSLEY: Or wired. That's what I
25 meant, but...

1 Your Honor, I'm hearing for the first
2 time today that the money -- I mean, we know that the
3 money was taken, but that it was no longer in the
4 account. I mean, I did get -- like I said, I got a
5 cashier's check today. I didn't get the prior ones.
6 But it did show that over the course of that month it
7 was still in -- technically in the account.

8 THE COURT: That's what --

9 MR. STERLING: Once a cashier's check
10 is cut, the bank takes the money --

11 MR. TOOSLEY: I know. I know. I'm
12 just saying that's the reason why I'm asking --

13 THE COURT: I want to go back to the
14 January 31st date so we can see what happened during
15 that February time period to the date that the
16 receiver actually got the funds.

17 MR. STERLING: Okay. I guess my
18 question is is there an order of contempt that this
19 is how we purge it or are you just ordering us to
20 produce this?

21 THE COURT: Well, I don't think you
22 could ever purge the contempt basically because the
23 funds weren't turned over, but right now we don't
24 know what that amount is. So --

25 MR. STERLING: Well, okay.

1 THE COURT: -- why don't we take it
2 one step at a time. We can --

3 MR. STERLING: I guess the point then,
4 though -- I mean, just from a theoretical standpoint
5 is while I understand that there is this pending
6 motion for rule, given the dismissal with prejudice,
7 I guess I am just confused as to -- when does this
8 end?

9 THE COURT: I would be very happy if
10 it's soon.

11 MR. STERLING: Okay. Well, I'm
12 just --

13 THE COURT: I'll tell you what your
14 client -- the principal of your client was here, and
15 I know it was very clear he was very worried about
16 his -- the money he collected from investors. I
17 don't blame him. He was trying to fund a plan. I
18 wasn't born yesterday. But it was very clear what I
19 wanted to have happen. I wanted that to be
20 determined down the street by the state court
21 receiver.

22 And I believe that what happened was
23 that you -- that somebody thought that, oh, we've
24 got this glitch in the order. We can do whatever we
25 want until the receiver is there. And that was

1 really not the sense of this order at all. And say
2 it's vague, but it was clearly the money that was in
3 the account that day should be turned over to the
4 receiver.

5 It couldn't be turned over before the
6 receiver was up and standing. But to take the money
7 in that interim was clearly a violation of the sense
8 of this order, and I want to know what that number
9 is.

10 MR. STERLING: Okay.

11 THE COURT: And then hopefully we
12 can --

13 MR. STERLING: But I guess in what
14 context? Because if a contempt order is being
15 entered --

16 THE COURT: Well, I won't enter it
17 today until -- I mean, there's already been a rule
18 entered.

19 MR. STERLING: Okay.

20 THE COURT: I am not --

21 MR. STERLING: Well --

22 THE COURT: -- going to bring your
23 client in in an orange original suit or anything.

24 MR. STERLING: I understand.

25 THE COURT: I want Mr. Toosley to get

1 this information.

2 MR. STERLING: Okay.

3 THE COURT: And he can take it from
4 there.

5 MR. STERLING: Okay. But I guess the
6 only reason I ask that is that, you know, if my
7 client makes the decision to have the orders reviewed
8 and -- you know, as to the -- you know, frankly, I
9 think it's to the court's jurisdiction and the scope
10 of what the order commanded my client to do. If
11 there's a contempt finding, then arguably I -- you
12 know, I can pursue that appeal to the district court.
13 Otherwise --

14 THE COURT: I mean --

15 MR. STERLING: -- we're --

16 THE COURT: -- threatening an appeal
17 to me is really not --

18 MR. STERLING: No, no, no, I'm not --

19 THE COURT: -- going to get you
20 anywhere.

21 MR. STERLING: Your Honor, I'm not
22 doing this for the purpose of --

23 THE COURT: Okay. This is what we're
24 going to do right now. And I have to leave at
25 3:00 o'clock for a meeting I'm speaking at. Right

1 now I'm going to revise this order because I want to
2 be clear. Obviously --

3 MR. TOOSLEY: And I do think just
4 February because March 1st is when I know there's
5 correspondence about it. So, I think --

6 THE COURT: Okay.

7 MR. TOOSLEY: And I think we do have
8 March now. We just got it last week. So I think as
9 long as it's the February accounting --

10 THE COURT: Okay. So --

11 MR. TOOSLEY: -- after the last
12 operating report.

13 THE COURT: Okay. So let's be clear
14 what you're looking for. You're looking for monies
15 that were in the account on January 31 or February 1.
16 I don't care which day you want to pick.

17 MR. TOOSLEY: Right.

18 THE COURT: Through the end of the
19 month of February, monies that came in, monies that
20 went out. It shouldn't be hard. And I think that
21 that should be furnished to Mr. Toosley. I mean, May
22 29th seems like a long time to do it. It's really
23 only month's worth of --

24 MR. TOOSLEY: Okay.

25 MR. STERLING: Two weeks?

1 MR. TOOSLEY: Okay. And hopefully we
2 don't have to see you other than one more time.

3 THE COURT: Okay. And I'm always
4 happy to see people, but this is really a case that I
5 thought we were going to be done with. So right now
6 I'm just going to -- I am making an -- the order is
7 that the accounting for the month of February will be
8 furnished to Mr. Toosley on or before the 29th, and
9 I'll have a status on June 5th to see if it's been
10 complied with.

11 MR. STERLING: Your Honor, I do know
12 that I am actually -- what time would the hearing be
13 on June 5th?

14 THE COURT: It would be at 1:15.

15 MR. TOOSLEY: It's just a status,
16 right?

17 You're out that week?

18 MR. STERLING: No, I'm not out, but I
19 have two hearings. I have one hearing in the
20 morning. So, the afternoon is fine.

21 1:15?

22 THE COURT: 1:15 on the 5th of June
23 for an accounting of January's --

24 MR. TOOSLEY: February.

25 THE COURT: Of February's monies in

1 and out.

2 Okay. Any question about the
3 vagueness of that order?

4 MR. STERLING: That's clear to me.

5 THE COURT: Okay.

6 MR. TOOSLEY: Thank you, Your Honor.

7 And, like I said, if I do have the
8 February already -- I said I wouldn't have filed all
9 of this. And I apologize. Like I said, I just got
10 the March and April last week, so I want to make sure
11 it's clear that's why I --

12 THE COURT: Okay. What's going on
13 with the -- is the -- what's going on with the
14 foreclosure?

15 MR. TOOSLEY: The foreclosure sale is
16 going forward in about a month. The judge did give
17 them one last time to come up with a plan to try to
18 pass off, but it did not happen.

19 THE COURT: Okay.

20 MR. TOOSLEY: So, the foreclosure is
21 the middle of -- the third week of June, I think.

22 MR. STERLING: I don't know if you
23 know. I mean, I'm basically --

24 MR. TOOSLEY: Yes.

25 THE COURT: All right.

1 MR. TOOSLEY: Thank you, Your Honor.

2 MR. STERLING: Thank you.

3 And, Your Honor, no disrespect. I
4 mean, this is -- I mean, I'm representing my client.

5 THE COURT: I understand. I just want
6 to make sure that you understand that I think your
7 client was quite clear in what the order was.

8 MR. STERLING: Okay.

9 THE COURT: And it looks like he
10 didn't do it, and that's a problem.

11 (End of Audio Recording.)

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CERTIFICATE

I, AMY DOOLIN, CSR, RPR, do hereby
certify that the foregoing is a true and accurate
transcription of proceedings electronically recorded
on May 15, 2024, submitted to D&E Reporting for
transcription, and contains all the content contained
in said recording and has been transcribed to the
best of my ability.

/s/Amy Doolin, CSR, RPR